

Proc. Law I

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Protest of Bid Rejection As Nonresponsive For Omission of Required Price]
10,163

FILE: B-193193

DATE: May 14, 1979

MATTER OF: Goodway Graphics of Virginia, Inc.--
Reconsideration

DLG 01409

DIGEST:

Prior decision, that bid which omitted required price was properly rejected as nonresponsive, is affirmed upon reconsideration since protester has not shown that prior decision was based on errors of fact or law.

Goodway Graphics of Virginia, Inc. (Goodway), requests reconsideration of our decision in Goodway Graphics of Virginia, Inc., B-193193, April 3, 1979, where we upheld the United States Government Printing Office's (GPO) determination that Goodway's bid was nonresponsive to an express solicitation requirement for a bid price on all items listed.

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Goodway argues that our decision was in error because it did not take into consideration the mistake in bid procedures of Federal Procurement Regulations § 1-2.406 (1964 ed.), which should have been applied in order to allow correction of its apparent mistake in bid. Goodway argues that it notified the GPO of its clerical mistake, not submitting a price for one of the items listed in the invitation, prior to bid opening and told GPO, at that time, that the omitted price was either "no-charge" or \$1. Finally, Goodway argues that the \$28,131.69 cost of making award to the next low bidder as a consequence of a clerical error, which, on an annualized basis, will have a \$48 price impact, amounts to an elevation of form over substance.

Our initial consideration of Goodway's protest did not include the argument that a mistake in bid had been alleged prior to bid opening since we did not perceive Goodway's submissions to our Office as raising this issue. Rather, it appeared from Goodway's submissions and GPO's report that the allegation that the omission of the bid price was in error was made after

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bid opening. Since a bid is generally regarded as nonresponsive on its face if it fails to include a price on every item as required by the IFB and mistake in bid procedures cannot be used to transform a nonresponsive bid into a responsive bid, General Engineering and Machine Works, Inc., B-190379, January 5, 1978, 78-1 CPD 9, the protest was decided on the basis that the omission could not be cured or waived as a minor informality.

Although Goodway alleged in its protest submissions that it notified GPO of its mistake within 1 hour after it had submitted its bid, there were no submissions by Goodway or GPO which showed that GPO received notice prior to bid opening or that the alleged notice was intended as a modification of Goodway's bid. In fact, in connection with the request for reconsideration, GPO denies receiving such notice from Goodway prior to bid opening. Since, in these circumstances, Goodway has failed to carry the burden of proving the validity of this argument, Aero-Dri Corporation, B-192274, October 26, 1978, 78-2 CPD 304, we find no error of fact or law in our prior decision.

In any event, we note that the regulations cited by Goodway do not apply to correction of mistakes in bid of the nature alleged here. Where a bidder discovers a mistake or omission in its bid prior to bid opening, modification thereof is subject to the late bid clause of the solicitation and can only be considered if processed accordingly. Bids cannot be modified on the basis of oral telephonic modifications. Sturm Craft Co., B-189811, December 8, 1977, 77-2 CPD 444.

Finally, we believe it more in the public interest to comply with established principles than to obtain a pecuniary advantage in a particular case by waiver of those principles. See, 41 Comp. Gen. 412, 416 (1961); B-169084, May 7, 1970.

Accordingly, our decision of April 3, 1979, is affirmed.

R. F. K. 11u.

[Signature]

Comptroller General
of the United States